UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,551	06/24/2003	Thomas A. Makowski	5150-80201	1235

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Jeffrey C. Hood
Meyertons, Hood, Kivlin,
Kowert & Goetzel PC
P.O. Box 398
Austin, TX 78767

EXAMINER
DAO, THUY CHAN

ART UNIT	PAPER NUMBER
2192	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/602,551	MAKOWSKI ET AL.
	Examiner	Art Unit
	Thuy Dao	2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>08 May 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

     a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

     b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

         Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

     (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

     (b)☐ They raise the issue of new matter (see NOTE below);

     (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

     (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

         NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

     The status of the claim(s) is (or will be) as follows:

     Claim(s) allowed: _____.

     Claim(s) objected to: _____.

     Claim(s) rejected: <u>69-92</u>.

     Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
     See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Tuan Q. Dam/
Supervisory Patent Examiner, Art Unit 2192

Continuation of 11. Other:

a) Claims 69 and 77 (Remarks, pp. 3-6):
Claim 69 is the representative claim (Remarks, page 5, last paragraph).

The limitations in issue "associating the determined graphical program code with the node, wherein, when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function" (claim 69, lines 12-14).

Response to paragraph 1) in Remarks, page 4:
Kudukoli explicitly teaches:
a New VI Object Reference Node (FIG. 13, [0212]-[0221]);
receiving first user input (FIG. 21, selecting "VI object class input", [0215]);
receiving second user input (FIG. 22, selecting "style input" based on first user input, [0217]);
associating determined graphical program code with the node (e.g.,
if "waveform chart" selected, associating determined graphical program code with said "waveform" control/node, see [0278]);
if "stop button" selected, associating determined graphical program code with said "stop button" user interface control/node, see [0279]);
and
if "random number generator" selected, associating determined graphical program code with said "random number generator" node, see [0282]).
That is to say, Kudukoli explicitly teaches "associating the determined graphical program code with the node (i.e., for itself), wherein, when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function" (claim 69, lines 12-14).

Response to paragraph 2) in Remarks, pp. 4-5:
The Applicants asserted, "Thus, in Kudukoli, there is no associating determined code with the New VI Object Reference node. Nowhere does Kudukoli mention or even hint at determining graphical program code for a node based on user-selection of displayed functions for the node, and associating the determined graphical program with the node, where when the node executes, the determined graphical program code executes to perform the function" (Remarks, page 5, first paragraph).

The examiner respectfully disagrees.
Kudukoli explicitly teaches:
FIG. 13, New VI Object Reference Node with a corresponding icon/appearance;
[0278] "In section 2 of FIG. 25, a New VI Object Reference node is used to create the waveform chart user interface control. As shown, the reference to the new graphical program generated by the New VI Reference node in section 1 is connected as the 'owner reference' input of the New VI Object Reference node", wherein said waveform chart user interface control also has the corresponding icon/appearance of the New VI Object Reference Node (i.e., associating determined code with the New VI Object Reference Node);

similar disclosure in [0279] a stop button user interface control; [0281] a waveform chart user interface node; [0282] a random number generator function node (i.e., associating with the determined code such as stop function, waveform chart, random number generator with the corresponding New VI Object Reference Node).

b) Claims 85 and 89 (Remarks, pp. 6-8):
Claim 85 is the representative claim (Remarks, page 8, first paragraph).

The limitations in issue "determining a second node based on the selected function, wherein the second node comprises a graphical representation of an implementation of the selected function, and wherein the second node comprises graphical program code executable to provide functionality in accordance with the selected function (claim 85, lines 8-11);
"replacing the node in the graphical program with the second node, wherein, when the second node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function" (claim 85, lines 12-15).

The examiner respectfully disagrees with Applicants' assertions.
As an initial matter, the Applicants explicitly defined "wherein the second node comprises: the first node icon and the graphical program code; or a second node icon and the graphical program node" (claim 96, lines 3-5).
That is to say, the second node may comprise the icon/appearance of the first node (New VI Object Reference Node) and the determined graphical program code associated with first and second user inputs (associated with "waveform chart", "stop button", or "random number generator").

In light of the claimed language and specification, Kudukoli explicitly teaches:

FIG. 13, New VI Object Reference Node with a corresponding icon/appearance;

[0278] the waveform control/node (the second node) has replaced the New VI Object Reference Node (the first node) by having the same icon/appearance with the New VI Object Reference Node but with the determined graphical program code associated with "waveform chart", see FIG. 25A, Section 2;

[0282] the random number generator control/node (the second node) has replaced the New VI Object Reference Node (the first node) by having the same icon/appearance with the New VI Object Reference Node but with the determined graphical program code associated with "random number generator", see FIG. 25B, Section 6;

[0284] a "wait" function node (the second node) has replaced the New VI Object Reference Node (the first node) by having the same icon/appearance with the New VI Object Reference Node but with the determined graphical program code associated with "wait function", see FIG. 25C, Section 8; and

[0286] the "Not" boolean node (the second node) has replaced the New VI Object Reference Node (the first node) by having the same icon/appearance with the New VI Object Reference Node but with the determined graphical program code associated with "Not" boolean function, and see FIG. 25D, Section10.

In conclusion, the examiner respectfully maintains grounds of rejection over claims 69-92.

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